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OFFICE OF PETITIONS

In re Patent No. 7,439,017 : DECISION ON REQUEST
Heroux et al. : FOR
Issue Date: October 21, 2008 : RECONSIDERATION OF
Application No. 09/976,437 : PATENT TERM ADJUSTMENT
Filed: October 15, 2001 : and
Atty Docket No. : NOTICE OF INTENT TO ISSUE
090900-0156 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on November 24, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred seventy-three (573) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by five hundred seventy-two (572) days is **GRANTED to the extent indicated herein.**

As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the "B" delay period, the over three year period begins on October 16, 2004 and ends on December 6, 2005, the day before the RCE was filed, and not December 7, 2005 the day of filing of the RCE as calculated by patentees. See 35 U.S.C. 154(b)(1)(B)(i). Thus, the over 3 year period is 417 not 418 days, and the B delay considering the 4 days of overlap is 413, not 414 days. As such, the correct patent term adjustment is 572, not 573 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **five hundred seventy-two (572) days**.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.



Anthony Knight
Supervisor
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT : 7,439,017 B2

DATED : October 21, 2008

DRAFT

INVENTOR(S) : Heroux et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 261 days.

Delete the phrase “by 261 days” and insert – by 572 days--